HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.702 of 2007

Between:

Modabalini Malakondaiah and two others. … Appellants

And

Fishermen Cooperative Society,
Nutchupoda, Pamuru Mandal,
Prakasam District, represented by
its President and three others. … Respondents

:: J U D G M E N T ::

Counsel for the appellants : Sri G. Ramachandra Rao
for Sri G. Pedda Babu

5th September, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 4-7-2007 passed by the learned Single Judge in Writ Petition No.7730 of 2007, whereby he quashed order dated 11-4-2007 passed by the Commissioner of Fisheries-cum-Ex-officio Registrar of Co-operative Societies (respondent No.2 herein) in the purported exercise of power under Section 32(7)(a) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act') and declared that if the respondents intend to challenge the validity of the election held on 6-3-2007, then it shall be open to them to take necessary steps as provided under the Act and the Rules made thereunder.

Respondent No.1 is a co-operative society registered under the

Act. On 6-3-2007, the managing committee of the society, whose term was to expire on 30-3-2007, conducted elections. The new committee comprising of President and eight Directors assumed charge on 9-3-2007. After one month and two days, respondent No.2 issued proceedings

dated 11-4-2007, whereby he appointed official Person-in-Charge on the premise that respondent No.1 is in receipt of government aid and election is required to be held in accordance with Rule 22-B of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short, 'the Rules').

Respondent No.1 questioned the appointment of official Person-in-Charge on several grounds including the one that the election held on 6-3-2007 could not have been nullified without issuing notice and giving the elected body an opportunity to represent its cause.

In the counter filed on behalf of the official non-petitioners, reliance was placed on Section 43 of the Act and it was pleaded that election to respondent No.1 ought to have been held in accordance with Rule 22 of the Rules and that the outgoing managing committee did not have the power, jurisdiction or authority to conduct the election.

The appellants, who got themselves impleaded as non-petitioners No.4 to 6, pleaded that the election held on 6-3-2007 was not valid and respondent No.2 did not commit any illegality by appointing official Person-in-Charge.

The learned Single Judge, after noticing the factual matrix of the case, Section 32(7) of the Act, the judgments of this Court in **Awari Devanna v. Divisional Co-operative Officer**[1], **B. Rajagopala Rao v. Registrar of Cooperative Societies**[2] and held that respondent No.2 could not have exercised power under Section 32(7) for appointment of official Person-in-Charge. This is evinced from the following extracts of the order under challenge:

"Under Section 32 (7) of the Act, the Government or the Registrar, as the case may be, are conferred with the power to appoint a person or persons-in-charge, to manage the affairs of the society for a period, not exceeding six months. This power can be exercised, only when a committee does not exist for a society, or in the opinion of the Government or the Registrar, it is not possible to call for a General Body meeting, to conduct elections for the committee.

In the instant case, the term of the committee expired on 30.3.2007. According to the petitioners, the outgoing committee conducted elections on 6.3.2007, and the committee that was elected on that day, had assumed office on 9.3.2007. A perusal of the impugned order, dated 11.4.2007, discloses that respondents 1 to 3 did not recognize the election. In the first paragraph of the proceedings, it was observed that the election to the Managing Committee of the society could not be held, on account of the allegations of irregularity, in the matter of admission of members. It was also pointed out that the society is in receipt of aid, thereby the procedure prescribed under Rule 22(b), for conducting elections, gets attracted. The occasion to make a reference to these facts in the impugned proceedings arose, in the light of an election, conducted by the outgoing committee. In case, the respondents were of the view that the election conducted on 6.3.2007 cannot be sustained in law, necessary proceedings in the direction of annulling that election, ought to have been initiated. If any members of the society were aggrieved by the said election, they ought to have moved the Tribunal. Appointment of a person-in-charge, simply by ignoring the election, which has already taken place, cannot be sustained in law.

There is another factor, which weighs with this court, to accept the contention of the petitioners. Even according to the respondents, the term of the Managing Committee of the society expired on 30.3.2007. The Act and Rules mandate that elections must be conducted, before the expiry of the term of an existing committee. In case, the conducting of elections becomes not feasible, steps under Section 32 of the Act must be taken forthwith, by ensuring that soon after the expiry of the term, the management is entrusted to the person-in-charge. The emphasis under the Act and the Rules is that a society must not be left without any agency to manage it, whether in the form of an elected committee, or a person-in-charge. If respondents 1 to 3 were genuinely concerned about the management of the society, they were expected to appoint a person-in-charge, by 30.3.2007. They swung into action only on 11.4.2007, at the instance of some individuals. It is not explained as to how the society was left, without any management, between 30.3.2007 and 11.4.2007."

The learned Single Judge then observed that the crucial question, which had direct bearing upon the entire issue viz., whether the society is in receipt of financial aid, ought to have been decided only after giving an opportunity to the society.

We have heard Sri G. Ramachandra Rao at considerable length and scrutinised the record. In our opinion, the conclusion recorded by the learned Single Judge that the Commissioner could not have indirectly nullified the election without determining the question whether the society is in receipt of financial aid and without giving it an opportunity of hearing, does not suffer from any patent legal infirmity warranting interference. We also agree with the learned Single Judge that proceedings dated 11-4-2007 issued by respondent No.2 are vitiated due to violation of the rules of natural justice. Indeed, it is neither the pleaded case of the appellants nor the learned counsel argued that before passing order dated 11-4-2007, respondent No.2 had given notice and opportunity of hearing to respondent No.1. Rather, the argument of the learned counsel was that notice is not required to be given as a condition precedent to the passing of order under Section 32(7) of the Act.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1417 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, C.J.

5th September, 2007

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1994 AP 357

[2] 1967(2) Andhra Weekly Reporter 26